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IN THE

Supreme Court of the United States

OCTOBER TERM, 1943.

No. 349.

CARLOS M. DE CASTRO, *Petitioner*,

v.

BOARD OF COMMISSIONERS OF SAN JUAN, *Respondent*.

ORAL ARGUMENT ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS, FIRST CIRCUIT.

April 24, 1944.

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Of counsel.

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Washington, D. C.,
April 24, 1944.

The above-entitled cause was argued in The Supreme Court of the United States, commencing at 1:12 o'clock p. m. on Monday, April 24, 1944,

Before:

HONORABLE HARLAN F. STONE, the Chief Justice; and
HONORABLE OWEN J. ROBERTS;
HONORABLE HUGO L. BLACK;

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* Reported by H. S. Middlemiss, Columbian Bldg., Washington, D. C.

HONORABLE STANLEY F. REED;
HONORABLE FELIX FRANKFURTER;
HONORABLE WILLIAM O. DOUGLAS;
HONORABLE FRANK MURPHY
HONORABLE ROBERT H. JACKSON; and
HONORABLE WILEY RUTLEDGE, Associate Justices, there being

Present:

On behalf of the Petitioner:

COLONEL WILLIAM CATTRON RIGBY, and FRED W. LLEWELLYN, ESQUIRE; and

On behalf of the Respondent:

F. FERNANDEZ CUYAR, ESQUIRE.

Thereupon the following proceedings were had and oral arguments made:

PROCEEDINGS AND ORAL ARGUMENTS.

The Chief Justice: The case of Carlos M. de Castro, Petitioner, against Board of Commissioners of San Juan, No. 349.

Counsel will proceed to argument.

Oral Argument on Behalf of the Petitioner.

By Colonel William Cattron Rigby.

Colonel Rigby: If the Court please.

The Chief Justice: Colonel Rigby.

Colonel Rigby: This is certiorari to the First Circuit.

The two questions of importance that are involved are, first, the length of the tenure of office of the City Manager of the Capital of Puerto Rico, San Juan, whether it is a life tenure or a four-year tenure.

Section 21 of the Act constituting the Government of the Capital of Puerto Rico, provides that the City Manager hold office during good conduct.

The Supreme Court of Puerto Rico holds that because of surrounding circumstances and history that that meant only four years.

We think that the language of the Act means for life, subject to removal in case of failure of good conduct.

The second question is as to the respect to be paid the decisions of the Territorial Courts of last resort.

Under a rule of this Court in existence for the past seventy years on that subject, the Circuit Court of Appeals for the First Circuit holds that the Rule makes their jurisdiction over appeals from the Supreme Court of Puerto Rico, in matters relating at all to local law, pretty much of a dead letter and, on that ground, they held that in this case, while if they were free to determine the question for themselves they should have been inclined to believe and to decide that the decision of the Supreme Court of Puerto Rico holding that the statute giving the term of office for good conduct to the City Manager was improperly interpreted by the Insular Supreme Court as holding it means only four years, nevertheless, they felt that they could not properly say that that decision was inescapably wrong within the meaning of the rule of this Court as they interpreted it and, therefore, they affirmed the decision of the Insular Court.

This Court granted certiorari and, I might say, I think properly and, at the same time that this certiorari in this case was granted, last February 28th, this Court ordered that this case and the next following case, the case of *Mario Mercado E. Hijos* v. *Elvira Olivieri Commins, et al.*, be argued at the same time, because that case also involves the question of the interpretation of this Rule.

In this case, in the Fall of 1938, the Board of Managers or Commissioners of the Capital, of San Juan, brought proceedings against the City Manager to remove him for cause, charging some nineteen different cases.

Of course, it was a political matter.

It came on for hearing in the—

Mr. Associate Justice Black (interposing): When you say that it was a political matter, just what do you mean?

Colonel Rigby: A matter of charges made. There was a political fight on between the parties.

There were nineteen charges presented but, as to twelve of them no evidence was presented at all on the hearing before the Board. They did not press three more of the charges and, at the end of the hearing there were four charges considered by the Board. At the end of the hearing there was a finding of guilty on those four charges.

There was an appeal to the District Court at San Juan. That Court found no evidence as to two of those charges and, as to the other two the Court held that there was conflicting evidence and that therefore the findings of the Board were conclusive and affirmed removal on that ground and, on appeal to the Supreme Court of Puerto Rico the removal was set aside, the Court finding that the only two charges of which there were or was any substance were two relating to the management of the waterworks of the Capital and, after a long trial, as the Insular Supreme Court said, "We cannot at this writing say what it was the Mayor should have done that he did not do" and therefore set aside the findings entirely and vacated the removal.

On appeal to the Circuit Court of Appeals to the First Circuit that was affirmed; it was affirmed without hearing, under Rule 39 (b), which we question here and also under which they said they were not in any position to determine a question of local law, but affirmed the finding.

This Court denied certiorari on October 13, 1941.

Up to that time there had been no question at all as to the length of the term of office for the City Manager.

However, when the mandate of this Court went back to the Circuit Court of Appeals and then to the Supreme Court of Puerto Rico, then on October 27, 1941, for the first time, the question of the length of the term of office of the City Manager was raised because—

Mr. Associate Justice Reed (interposing): When did his term expire, according to their contention?

Colonel Rigby: On February 10, 1941, their contention was.

The Chief Justice: That was four years?

Colonel Rigby: That was four years?

Mr. Associate Justice Reed: That was after the decision of the Supreme Court of Puerto Rico?

Colonel Rigby: After the first decision in 1940, and a few days—well, about a month after the decision of the Circuit Court of Appeals and on the same day, as a matter of fact, February 10, 1941, when the respondent filed a petition for reconsideration with the Circuit Court of Appeals, without raising that question at all, and three months before their filing of a petition for certiorari, in May, 1941, in this court, in which they did not raise the question at all.

They raised the question for the first time when it went back and, on October 27, 1941, they filed a petition to stay the execution of so much of the Order of the Supreme Court of Puerto Rico as included the direction to reinstate him in his position as City Manager, setting up then that his term was only a four-year term.

The Supreme Court of Puerto Rico considering that the statutory language of Section 21 of the Act directing that the term of the City Manager shall be—the Chief Executive of the Capital: "He shall be appointed by the Board of Commissioners created by this Act and shall hold office during good conduct," was uncertain and indefinite enough so that evidence or matters of judicial notice could be taken into consideration to determine whether or not under all the circumstances it meant what apparently it said, "during good behavior," proceeded to hold that because the term of office of the Commissioners, of the Board of Commissioners by whom he was appointed, was a four-year term, and because it appeared that they took into judicial notice that there had been, before each election in 1936 and in 1940, candidates announced by the political parties of the Island for the office of City Manager, and because in 1940, after he had been removed, and while the litigation

was pending, de Castro himself was a candidate for the Legislature of the Island, that it was a general understanding that the language does not mean just what it says and that he should be held to hold office for only four years.

Now, it is fair, perhaps, and right to go into a little history of the situation in connection with that:

The Act was passed in 1931.

Prior to 1931 the General Law concerning municipal governments in the Island was in force in San Juan, in the Capital; that is, in its last form, the Act of 1928, which was amended by the way in May, 1931, on the same day that this special law for the Capital went into effect, and that Act provided that the chief officer of the municipality should be a Mayor, elected for a four-year term, every four years, without any question.

The 1931 Legislature adopted this entirely new plan for the Government of the Capital City, designating it the Capital of Puerto Rico.

As the Bill was first introduced in the Legislature, it provided, in Section 21, for a Mayor to be elected for four years, for a four-year term every four years, in the same way as had been provided for the municipality. The Bill was amended, however, during the course of its passage in the Legislature and emerged in the form that it now holds and which I have read, which follows the general theory that was then getting pretty widespread throughout the United States, in the continuing of the appointment of City Managers, many of these City Managers, of course, in many cities have been given life terms.

There is rather an interesting discussion of that in Stone and Price's book on City Managers which we have cited in our brief.

The Act was passed in 1931, in May, as I say.

It provided that there should be also a Board of Commissioners the Legislative authority of the City, and Section 9 provided that the Commissioners should have a sort of staggered term, one for one year, one for two years, one

for three, one for four, and one for five years, and no definite four-year appointment for the members of the Board at all, and it provided that there should be a City Manager, a Treasurer, a Director of Public Works, a Director of Health and Charity, a School Director, an Auditor, and a Secretary of the Capital.

Those were the other officers.

The Act provided no definite term of office for those other officers.

The Act provided that all except the Auditor should be appointed by the City Manager and it provided that the Auditor should be appointed by the Board of Commissioners.

Then the Act provided that the employees should hold office for the terms, respectively, of the persons appointing them.

Section 39 of the Act says:

> "All appointments of employees shall be made by the respective officers, according to the department of the Capital in which they render services. Said employees shall be appointed for the term for which each officer is appointed."

Now, one of the reasons that the Insular Supreme Court assigned for holding that the intention was to make the appointment of the City Manager for only four years was that, otherwise, there would be confusion and variety in the appointments of the other officers, and that those appointed by the City Manager would hold office for one term and those appointed by the other officers would hold office for another term.

Of course, it seems to us, the plan seems perfectly plain and quite in accord with the usual plan of City Manager scheme, that is, the City Manager should be a permanent, executive, official and hold office during good conduct. Also that he appoint the other officers whose terms are not fixed, and would have the power to determine for what terms he would appoint them, the higher executive officers, except

the Auditor who, quite properly, was appointed not by the City Manager but by the Commissioners who might, in the same way, make such arrangements as to him, and that the minor employees, quite in line with the provisions for the Civil Service establishment in Puerto Rico—and there is a Civil Service law there—were to be in office permanently under Civil Service status as long as the office of the person appointing them continued.

The whole purpose was to remove, as I say, government from political party plum management.

Mr. Associate Justice Reed: Do you take the position that the Treasurer and the Auditor were appointed for an indefinite period during good behavior?

Colonel Rigby: No, no; there was no provision for that. But, in accordance with the Shurtleff case and the Humphrey case, and others recently, we think that the City Manager had power to determine, in appointing those officers, for what length of time he would appoint them or, if he did not appoint them for a definite length of time, that he would have the power to remove them in the same way that it was held in the Shurtleff case and the Humphrey case, that the President charged with the duties of seeing that the laws were faithfully executed has the power to remove in the absence of any provision as to the tenure of office.

Mr. Associate Justice Reed: But Section 39 seems to say that they should be appointed for the term of which the officers are appointed.

Colonel Rigby: The employees, not the officers.

That is the distinction as we read it.

There are six officers, the City Manager, the Treasurer, the Director of Public Works, the Director of Health and Charity, the School Director, the Auditor, and the Secretary of the Capital.

Then there is a provision that the Board of Commissioners may determine what employees are to be employed and those employees who are under policy making officials are not charged with the policy making, and that kind of thing, but are subordinate employees, as we read it.

The Chief Justice: You derive that from the meaning of the statute, not the constitutional grounds.

Those cases that you cited were all constitutional cases, involving interpretation of the Constitution.

Colonel Rigby: The Shurtleff case and the Humphrey case following was, as we understand it, that the President may remove an officer who is not a—

The Chief Justice (interposing): That is because of his powers as the Executive under the Constitution, but does that have any bearing on the question that we have here and that is: What is the term of office of this man?

Colonel Rigby: No, not strictly and absolutely and, for that reason, we think the Insular Supreme Court was wrong entirely.

The Chief Justice: Do you say that we have no question except this one question: what powers were given in the statute for the appointment and for what term?

Colonel Rigby: Under the term of office of the City Manager—outside of that, the term of office of the City Manager, no, there is no other question here.

There is a question here of whether the Insular Supreme Court was wrong in considering all these questions of possible confusion that they thought might arise from questions of the meaning of the other sections. That had nothing to do with it and was contrary to anything that is advanced.

No, no. We are definite in the position that the proposition before us is an interpretation of that section 21 which says precisely this:

> "The City Manager shall be chief executive of the Capital; he shall be appointed by the Board of Commissioners created by this Act and shall hold office during good conduct."

Mr. Associate Justice Reed: Does the City Manager have employees in his office?

Colonel Rigby: Yes; the City Manager does have employees in his office, contra-distinguished from officials. Employees of his office, yes.

Mr. Associate Justice Reed: What is their term of office, under your theory?

Colonel Rigby: Their term of office apparently is his term of office; they are practically there for life.

Mr. Associate Justice Roberts: He would have power under the other section to fix the appointment of those employees for five years or ten years or whatever he likes.

Colonel Rigby: Of course he would.

Mr. Associate Justice Reed: But section 39 says:

> "Said employee shall be appointed for the term for which each officer is appointed."

Colonel Rigby: Yes. His minor employees have apparently the same term of office he does.

There is a possible confusion.

Mr. Associate Justice Reed: And that Section also says that they can only be removed on charges preferred by him.

Colonel Rigby: Apparently so.

Of course, whether that was a mistake that the Legislature made or whether it was not, is a matter for the Legislature to determine and if it was a mistake it is for the Legislature to correct it as we see it.

I admit that there may be a little confusion there.

Of course, we think that there is no possibility of such ambiguity about the provision of Section 21 as would open it to any discussion as to the effect of these other things, but it was because the Insular Supreme Court thought that there was ambiguity that they went into the other question and, if I may go into another factor there, as we have said, the Insular Supreme Court thought, as we find in its opinion, that the history shows very plainly that at the time everyone concerned understood, as we see it, that the term of the City Manager was for life or during good conduct.

Mr. Associate Justice Jackson: What shows that legislative history?

Colonel Rigby: Several things.

In the first place, if I may be permitted to detail them, there was, as I said at that time, under the four-year term for the Board the provision in Section 50 that beginning in 1936 the Board then coming into office should have a four-year term.

The first City Manager, Mr. Castano, went into office September 11, 1931, I think the date was. Five years afterwards, on September 11, 1936, he wrote a letter to the Board of Commissioners tendering his resignation to take effect 150 working days afterwards, that is to say, on March 18, 1937, a time which does not seem to fit the four-year term or any other term. It was the term that he elected to tender his resignation upon. The resignation was accepted by resolution of the Board dated September 16, specifically accepting it, with pay while he was on leave of absence until the end of that period of time.

The certificate of the Auditor, former Secretary, which we have here and have appended as an exhibit to our reply brief put on file this morning, because we just finally got it, established that Mr. Castano received his pay during that whole 150 working days.

The next officer in line, the Treasurer, Mr. Bolivar Pagan, now the Commissioner of Puerto Rico in Washington, automatically took office as acting City Manager upon that date, and continued as acting City Manager until the 4th of the following January.

In the meantime, at the election of 1936, the new Board of Commissioners had come into office and, at the request of that Board made to the Attorney General of Puerto Rico, the Attorney General on December 8th wrote an opinion as to whether the Board—on being asked whether the new Board could proceed to elect a City Manager to fill the vacancy, and he said that it was premature for the outgoing Board to ask the question; that the new Board would be the one to ask that; and he said that they could not fill the vacancy made by Mr. Castano's taking leave of absence

during his term of leave of absence, because he was still the City Manager.

The Board acquiesced in that; and then the new Board coming into office, on the following January 4th, also acquiesced in that, and, instead of appointing a new City Manager, instead of appointing Mr. de Castro whom they desired to appoint, who had been a candidate for City Manager in view of Mr. Castano's resignation on the previous September 11th, Mr. Bolivar Pagan took leave of absence as Treasurer, but before doing that he appointed Mr. de Castro as the Director of Health and Charity. Then he himself being automatically as I have said, acting City Manager, took leave of absence and that left the next man, the Director of Public Works as the City Manager or acting City Manager. He also took leave of absence, and in that way made Mr. de Castro, the new Director of Health and Charity, the acting City Manager. But de Castro did not draw pay as City Manager; and only on March 19th following, the day after Mr. Castano's leave of absence expired, then he was elected by resolution, which is an exhibit here, as City Manager.

In the meantime there had been another opinion by the Attorney General on January 30, holding squarely that the term of office of the City Manager was during good behavior, good conduct.

Then at the session of the Legislature then pending, a Bill was introduced to amend Section 21 so as to provide for a Mayor to be elected for four years, and the Legislature rejected that Bill, did not pass it; and, at the following session in 1937 a similar bill was again introduced in the Legislature, in the Senate, and the Legslature rejected it.

Then as I have said, during all the time while the first phase of the litigation was pending concerning the attempted removal for cause, no allegation was ever made anywhere in the pleadings or in the briefs, setting up this claim of a four-year term of office, even though, as I have said, when the petition for rehearing was filed in the Circuit Court of Appeals, that was the very day that they now say de Cas-

tro's term of office had expired; and when the petition for certiorari was filed here, that was three months after they now say it had expired; and if the Supreme Court of Puerto Rico, which was simply the Appellate Court itself to which the appeal had been brought from the District Court, had power to entertain that question before sending its mandate down to the District Court then the Circuit Court of Appeals likewise had the same power and it would have been just as proper to have presented that question to the Circuit Court of Appeals in connection with the petition for rehearing or to this Court in connection with the petition for certiorari; so it seems to us it really was an after thought in that respect.

Now, that brings us to the action of the Circuit Court of Appeals which really, in its opinion, went over about the same ground I have gone over here and came apparently to the same conclusion and quite distinctly and directly, that there was no ambiguity in this provision of Section No. 21, that it means just what it says, and it meant the same thing in 1936 and 1937 as it did in 1931 when it was enacted; but then they say "if we were free" we would decide differently from the insular Court.

That to my mind is one of the very important things here.

The Court, speaking by Mr. Justice Magruder says, and this is at page 91 of the record:

> "If we were free to take a wholly independent view of the point at issue we would be inclined to conclude that the meaning of Section 21 is clear, and that the court below went beyond the permissible limits of interpretation in reading the clause 'and shall hold office during good conduct' as meaning that 'the tenure of office of the City Manager of the Capital is that of four years, provided that during the same he observed good behaviour'."

Mr. Associate Justice Frankfurter: Is either the Circuit Court of Appeals or are we, here, free to take a wholly independent view?

Is it your proposition that this Court in a matter coming from the Puerto Rico Supreme Court should take a wholly independent view?

Colonel Rigby: I think so.

Mr. Associate Justice Frankfurter: What do you mean by that?

Just paraphrase that: What you think our function is in reviewing a judgment of the Puerto Rico Supreme Court dealing with Puerto Rico legislation.

Colonel Rigby: I have tried to say here in our brief in one paragraph what we think that it means, at the bottom of Page 15 and the top of Page 16 of our brief, as we construe it.

> "This rule is only that, in cases presenting two or more practical solutions of a local problem, where the Territorial Court has arrived at a solution 'not unsupported by logic or reason', it is not to be overturned, in view of the respect properly to be accorded to the decisions of local courts upon matters primarily of purely local concern."

That is, as we think, the gist of the situation.

In appendix F of the brief here we have quoted, I believe, all the cases that we have been able to find in this Court stating this rule.

Mr. Associate Justice Frankfurter: What pages?

Colonel Rigby: Pages 63 to 79 where we have quoted and summarized all of the decisions that we could find. I believe we have combed the field pretty well concerning this rule, beginning with the first decision away back in 1874, in the case of *Sweeney, et al.* v. *Lomme*, and going down to the last one which is a decision in the second Rubert Hermanos, Incorporated, case reported in 315 U. S. 637.

Mr. Associate Justice Reed: I take it you do not argue that the First Circuit should act as though it were a court of equity reviewing the judgments of the lower District Court?

Colonel Rigby: No—of course—I think the rule is, as nearly as I can summarize it, just what I have said, and I do

not understand that the decisions in the two Sancho Bonet cases, *The Treasurer of Puerto Rico* v. *The Texas Company* in one case, 308 U. S. 463, and against the *Yabucoa Sugar Company*, reported in 306 U. S., were intended by this Court to change that rule in any substantial way: In fact, both of those cases, of course, were founded directly upon the former decisions and both of them were cases where there had been overturning of the decisions of the Insular Court, in cases where it was very plain that there were at least logic and reason behind the decisions of the Insular Supreme Court, and that where, as this Court said in the *Texas* case particularly, while of two views of the interpretation of the local statute, the one which the Circuit Court of Appeals of the First Circuit had taken was one view which was reasonable enough itself, yet the view the Insular Supreme Court had taken was also as reasonable, at least, and under those circumstances this Court would not uphold the Circuit Court of Appeals in setting up its own view, even though that in itself may be equally reasonable or more reasonable, against the view of the Insular Court which was also reasonable.

Mr. Associate Justice Frankfurter: Have you included in your brief the present state of the jurisdictional authority of the Federal Courts over the outlying domain, including Alaska, Hawaii, et cetera, to see as to which there is appeal and as to which the mode of review is expressly by certiorari as in the Philippines?

Colonel Rigby: No, I have not.

Mr. Associate Justice Frankfurter: Do you happen to know why Congress cut off review of the acts of the Supreme Court of the Philippines except by certiorari and it did leave appeal from the Supreme Court of Puerto Rico?

Colonel Rigby: The answer to that, is it not, is that from beginning legislation the Congress has taken a different course for the Philippines than for Puerto Rico? In

the very beginning, the Senate, at the time of the approval of the Treaty with Spain—

Mr. Associate Justice Frankfurter (interposing): Not on this point, as far as I recall.

Colonel Rigby: What is that?

Mr. Associate Justice Frankfurter: Not on this point.

As to both the Philippines and Puerto Rico, appeal might come direct to this Court from the Supreme Court of those two Islands or the Archipelago and the Island until it was cut off in the case of Puerto Rico to the First Circuit in 1913?

Colonel Rigby: My thought is—the only thing I know is that that goes to the general difference in the course of legislation between the way Congress has considered the Philippines and Puerto Rico from the beginning, is the only explanation I know for it having done that. Of course, in the Philippines from the first it looked forward, apparently, to not continuing permanent sovereignty over the Philippines.

At the time of the approval of the treaty with Spain—

Mr. Associate Justice Frankfurter (interposing): A good many cases come here or did come here as a matter of right, in 1925, and the Puerto Rico cases were shunted off from this Court to the First Circuit in 1913, I think.

Colonel Rigby: To the First Circuit; I think at about that time.

Mr. Associate Justice Frankfurter: What I want to know is why, when 1925 came along, that was done; and whether there is any light on the subject that Congress did not assimilate the mode of review of the Islands' Supreme Court to that of Puerto Rico.

Colonel Rigby: I should be glad to make inquiry into that and include it in a memorandum which I may file here.

Mr. Associate Justice Frankfurter: Also: What light there is in reference to the other outlying domains, whether this was a survival without thought that no one got around to, or was by some design as to the relation of the review

over the Puerto Rico Supreme Court so differently dealt with than in the case of the Philippines.

Colonel Rigby: I will be glad to. Of course, Hawaii and Puerto Rico are dealt with in the same way.

Mr. Associate Justice Frankfurter: And the Virgin Islands and the Panama Canal; they were distributed among the various circuits.

Colonel Rigby: I will be glad indeed to put a memorandum on file.

I think, for the moment, that that is all I have to say.

Oral Argument on Behalf of the Respondent.

By F. Fernandez Cuyar, Esquire.

Mr. Cuyar: I think the facts have been pretty fairly stated by counsel for the petitioner.

Of course, I shall have to clear up one or two points of fact:

I wish in the first place to make it clear that the reason why the Board did not raise this question of tenure in its first appeal to the Circuit Court, the First Circuit, is very evident, and the reason why it did not raise this question of tenure in its petition for certiorari before this Court, is also evident and is because, manifestly, it was immaterial in the case.

The first judgment rendered by the Puerto Rico Supreme Court dealt only with the issue as to whether valid charges had been preferred which constituted due cause for removal within the statutory concept, and whether evidence supported those charges.

Therefore, on appeal from a judgment of the Insular Supreme Court to the Circuit Court, obviously no question of tenure could have been involved and, correspondingly, on a request for a writ of certiorari to this court from the judgment of affirmance from the Circuit Court, the Board could not assign or predicate any error based on termination of a tenure of office which had not been discussed or elicited in any of the inferior courts.

But when the mandate of the Circuit Court of Appeals, after the petition for certiorari was denied here, came down, and was received in the Insular Supreme Court, the tenure of office of petitioner had expired, as we view it.

Since the judgment to reinstate was affirmed, and had been entered by the Supreme Court of Puerto Rico on appeal from the District Court of San Juan, that was a judgment of reversal and, upon receipt of the mandate, as I said, the Insular Supreme Court acquired jurisdiction in the premises in that case, and I do not think it needs much argument or authority to sustain the proposition that if such was the case, assuming for the purposes of this argument that our contention is correct and that the tenure of the office of this petitioner had already expired when the mandate got down to the Insular Supreme Court, no authority is necessary to affirm the proposition that it would be even a perversion of justice to order a man reinstated or inducted into an office the term of which had already expired, an office to which he was not entitled at that time even if charges had not been preferred against him.

So the Board will not devote much attention to the contention made by the petitioner herein that the Supreme Court of Puerto Rico had no jurisdiction to enter the judgment of which the petitioner now complains.

Now, about the Act in itself:

As the distinguished counsel for the petitioner has stated, the Act was approved in 1931. Before that and ever since the American Government acquired the Island by Treaty in 1898, after the Spanish-American War, all Mayors of all the municipalities of Puerto Rico, and all municipal assemblies of all the municipalities of Puerto Rico, have been elected by the people for four years.

But in 1931, as my distinguished colleague said, some sort of political matter sprung up in San Juan and the legislature decided to change the Governmental structure in San Juan.

However, the change was not in the sense that the petitioner contends. The reasons are these:

Section 21 of the Act, the one here in question, provided for the chief executive of the new government. That section, providing for the chief executive of the new government, was presented providing for the election of a city manager, of a Mayor, every four years in the quadrennial general elections usually held in Puerto Rico.

Section 50 of the Act provided for a Board of Commissioners.

The Chief Justice: Where are the Acts referred to in your brief?

Mr. Cuyar: Well, some sections are in Appendix A of Petitioner's Brief and some others are in Appendix A of Respondent's Brief.

Mr. Associate Justice Frankfurter: I want to be sure I understood one thing:

Did you say that was the bill that was introduced, for a four-year tenure?

Mr. Cuyar: Yes.

Mr. Associate Justice Frankfurter: The Bill was explicit for a four-year tenure?

Mr. Cuyar: Section 21 of the Bill provided for the Chief Executive—you will find that, your Honor, in the appendix to the Petitioner's Brief.

That is at Page ——

Colonel Rigby (interposing): Sixty-one.

Mr. Cuyar: Sixty-one. That is right.

As originally presented, the draft of Section 21 provided for the Mayor to be elected by popular vote in the general elections that are to be held in Puerto Rico every four years and that the Mayor would discharge the duties of his office during the term of four years and until such time as his successor, duly elected or appointed, takes possession of the office.

That is the original draft of Section 21.

Mr. Associate Justice Frankfurter: Did the tenure, the four year tenure in your municipalities come in after the change of sovereignty—the four year tenure?

Mr. Cuyar: I think so, Justice Frankfurter.

Mr. Associate Justice Frankfurter: But in all events that was the prevailing tenure up to this 1931 Act?

Mr. Cuyar: Exactly, sir.

So the original draft of Section 21 was in accordance with the prevailing trend or practice in the election of Mayors, but Section 50 of the Act, as originally enacted, provided that the Board of Commissioners created by this Act shall be elected by popular vote at the general elections to be held in 1936 and every four years thereafter.

In other words, originally the Act provided for an elective board of Commissioners and an elective chief executive of the City.

Mr. Associate Justice Reed: Where is the original Section 50 to be found?

Mr. Cuyar: At Page 46 of the Petitioner's Brief, both the original and the amended Section 50.

Of course, Section 50 was approved as presented at that time—

The Chief Justice (interposing): The Court will be in recess.

(Thereupon at 2 o'clock p. m. recess was had until 2:30 o'clock p. m., this date, at which time the following occurred):

Mr. Cuyar: In making reference to the original of this Act, No. 99, as providing for an elective board and an elective chief executive, the point I wanted to make is this: That there was no idea, no proposition, no object, of changing the general practice of electing a chief executive of municipalities and of municipal assemblies in Puerto Rico. However, Section 21 was not passed as originally drafted or presented, the reason being this:

The Court will notice that the original text of section 21 reads that the Mayor will be elected at the general elec-

tions that are to be held in Puerto Rico every four years.

Mr. Associate Justice Jackson: Do you have any officers in the Puerto Rican Government whose tenure ofoffice is for life?

Mr. Cuyar: None, sir, except judicial officers who are appointed by the President with the advice and consent of the Senate here.

Mr. Associate Justice Reed: They are not life tenures?

Mr. Cuyar: Yes, they are.

Mr. Associate Justice Roberts: What about the local judges?

Mr. Cuyar: They are appointed for a term of years.

Mr. Associate Justice Frankfurter: How many cities have a city manager?

Mr. Cuyar: Just San Juan.

Mr. Associate Justice Frankfurter: San Juan?

Mr. Cuyar: Yes.

As I was saying, if Section 21 of the Act, as originally drafted, had been approved, as it was originally presented, then the City of San Juan could not possibly have had a City Manager or a chief executive for about one year and five months.

The reason is this:

The original draft of Section 21 stated that the Mayor would be elected in the general elections to be held in Puerto Rico.

This law was approved in 1931.

General elections would not be held in Puerto Rico until 1932, November, 1932, in accordance with the organic act of Puerto Rico.

Therefore, if this section had been left as presented originally, providing for an elective Mayor, then it could not have been possible to have a City Manager in San Juan for about a year and five months.

That was the reason why Section 21 was not approved as originally presented.

The Chief Justice: Where does the original draft appear?

Mr. Cuyar: At Page 61 of Petitioner's Brief, Appendix E.

However, it could be argued—

Mr. Associate Justice Reed (interposing): Well, do you have a record of the Puerto Rico assembly, such as we have in the Congressional Record here of debates and so forth?

Mr. Cuyar: Well, yes, there is a legislative journal but in this particular case there is none; there is no record of debates or committee reports or anything like that.

Mr. Associate Justice Reed: None of that?

Mr. Cuyar: None of that.

Well, if Section 21—I was saying, and I beg your pardon, —that if the section as originally drafted had been passed it would not have been possible to have a city chief executive for about a year and five months. So it was necessary that it be amended before passage.

It could be argued, though, that in amending it the legislature could have provided for a specific term under the circumstances of the case. I mean, taking into consideration the whole statute.

That was impossible for this reason:

If upon amending Section 21 the legislature would have stated expressly a four-year term for the City Manager, that would have meant that in 1935, four years after 1931, when the Act was approved, the term of the City Manager would have expired.

Now, since Section 50 of the Act, providing for an elective Board of Commissioners, expressly states that the Board of Commissioners shall be elected in the 1936 elections, then from 1935 until 1936 there would not have been a chief executive, even.

That was the dilemma which the legislature faced, and the legislators approved, then, this Section 21 providing that the chief executive should be appointed by the Board of Commissioners created by this Act, and Section 50 was approved stating that the Board of Commissioners created by this Act should be elected for four years, and that the

Board of Commissioners created by this Act should choose the City Manager.

Mr. Associate Justice Frankfurter: Then, how do you account for the further provision that he shall hold office during good conduct?

How does that fit in with the time necessities which you have just given us?

Mr. Cuyar: I do not quite understand the question.

Mr. Associate Justice Frankfurter: As Section No. 21 was passed, it not only took out the elective feature—

Mr. Cuyar (interposing): Yes?

Mr. Associate Justice Frankfurter (continuing): But it also took out the four-year feature and it also added a tenure "during good conduct" rather than leaving it all to the implications for which you argue of Section 50, namely because the Board which is the appointing source has a four-year tenure therefore the appointee must have a four-year tenure.

Mr. Cuyar: Well, that issue was raised in the early stages of the litigation as follows:

The Board argued that "during good conduct" meant that the City Manager was subject to removal by the Board when, in the Board's opinion, good conduct had not been observed by the Mayor.

The Chief Justice: Whether the four years lapsed or not?

Mr. Cuyar: That is right.

But the City Manager argued that that did not mean anything like the Board said; that the grounds for removal were stated specifically in Section 22 of the Act and that "during good conduct" did not mean a thing.

That is exactly what he argued and, as a matter of fact, the prior judgment of the Supreme Court of Puerto Rico held that that was the real intent of the legislature.

Mr. Associate Justice Frankfurter: In its first disposition, did the Supreme Court write an opinion?

Mr. Cuyar: Yes.

Mr. Associate Justice Frankfurter: Where can I find that?

Mr. Cuyar: At Page 1 of the record, sir.

Mr. Associate Justice Frankfurter: Is Justice Wolf still on your court?

Mr. Cuyar: No. Justice Wolf resigned four or five years ago.

Mr. Associate Justice Frankfurter: He was out of this case, was he?

Mr. Cuyar: Yes, he was.

Mr. Associate Justice Reed: Are Sections 9 and 50—I am looking at the record at Page 85 and Page 82 now—Do I understand you to say that Section 50 superseded Section 9 of the Act No. 99?

Mr. Cuyar: Section 9, as the Supreme Court of Puerto Rico viewed it, and as I understand it, provided for a first appointed transitory board, as I call it.

In other words, the Legislature set up a government in 1931 which was to be appointive and which had a tenure until the 1936 general election. So the first Board of Commissioners was appointed and the term of its appointment was until the general elections of 1936.

Mr. Associate Justice Reed: Did the amendatory Act No. 10 follow at a different session of the Legislature from that in which Act No. 99 was adopted?

Mr. Cuyar: Yes, 1937—five or six years later, after the general elections of 1930.

Mr. Associate Justice Frankfurter: May I understand one more thing:

You say that there are no officials in the Island other than officials of the United States Government who have a tenure other than an elective tenure—is that right, a time tenure?

In other words, all Puerto Rico officials have a limited time tenure?

Mr. Cuyar: All of them, yes.

Mr. Associate Justice Frankfurter: All the officials here are elected officials?

Mr. Cuyar: Not all of them.

Mr. Associate Justice Frankfurter: Who is not?

Mr. Cuyar: District Judges are not. Municipal Judges are not.

Mr. Associate Justice Frankfurter: What is their tenure?

Mr. Cuyar: For Municipal judges four years; for the District judges ten years.

Mr. Associate Justice Frankfurter: Of the executive officials in the Island, is there any other office which goes by appointment rather than by popular election?

Mr. Cuyar: Civil Service officials.

Mr. Associate Justice Frankfurter: I mean important ones, not the clerical staff.

Mr. Cuyar: Most of the cabinet officers, what we call cabinet officers are appointed by—

Mr. Associate Justice Frankfurter: The Governor, with the—

Mr. Cuyar (interposing): With the advice and consent of the Insular Senate.

Mr. Associate Justice Frankfurter: My real question is this:

Is there any light to be had in regard to other office holders of a comparable nature to the office of City Manager of San Juan,—that is what I am trying to get at.

Mr. Cuyar: None that I know of.

Mr. Associate Justice Black: Who appoints the Utility Commission?

Mr. Cuyar: The Public Service Commission?

That is appointed by the Governor with the advice and consent of the Senate.

Mr. Associate Justice Rutledge: And the President of the University?

Mr. Cuyar: By the Governor with the advice and consent of the Senate.

Mr. Associate Justice Reed: At one time was the Board of Commissioners composed of more than nine members?

Mr. Cuyar: Never, sir.

The Board of Commissioners of San Juan?

Mr. Associate Justice Reed: Yes.

Mr Cuyar: Never. It was originally composed of five, according to Section 9, all appointed by the Governor; that was the first Board, and then in 1937, I think, Section 50 was amended so as to provide four more members, appointed also. The other five were elected, elected in the general elections.

Mr. Associate Justice Reed: Section 50 seems to expect a continuation in office of those who were appointed.

Mr. Cuyar: Section 50?

Mr. Associate Justice Reed: On Page 85 of the record.

Mr. Cuyar: Yes, as amended.

Mr. Associate Justice Reed: Yes.

Mr. Cuyar: It provided that the five members of the Board of Commissioners elected at the general elections of 1936 should continue in office until the end of the term for which they were elected—that is, four years.

Mr. Associate Justice Reed: Well, were they elected?

Mr. Cuyar: For four years.

Mr. Associate Justice Reed: For varying terms?

Mr. Cuyar: No, sir. The only varying terms and staggered terms were the ones for the first Board of Commissioners, appointed by the Governor with the advice and consent of the Senate.

Mr. Associate Justice Reed: Was there some Act to change that between Act No. 99 and Act No. 10?

Mr. Cuyar: No, sir. Act No. 99 in its section 50 provided that the Board created by this Act shall be elected by popular vote at the general elections to be held in 1936 and every four years thereafter, and the Commissioners appointed by the Governor shall hold office until the first Monday in January, 1937—that is, immediately after the general elections of 1936.

So the general scheme of this statute, as the Court below viewed it, and as the Board contends, was to set up a provisional, appointive government in San Juan from 1931 to the general elections in 1936.

The fact of the matter is that they wanted to jump one election, 1932.

They did. And, in 1936 the elective form of Government again went into effect.

Now, the first City Manager, Mr. Castano, held his term in accordance with the original set-up as I have described, until 1937.

Then, in September of 1936, he resigned his office because of illness, but, before resigning, he set up as a condition that he should be given practically six months salary. And, in my opinion, the Board of Commissioners in granting this leave acted without authority, but it did.

The situation in 1936, after the elections were over, after the petitioner had campaigned as a candidate for office, after the Board of Commissioners, pledged to vote for him, was elected, was that the petitioner asked to be put into office in accordance with the elections already had, and then the officers or officials of the Government asked the Attorney General for an opinion as to whether they could appoint a City Manager.

Well, the Attorney General answered that if the opinion was asked for by the then acting Board of Commissioners, not the one which had just been elected, but the one appointed by the Governor originally, he would not give an opinion because their term would be over and they would not have the right to elect any City Manager then, but, he said, that if the opinion desired was about the power of the original Board of Commissioners to appoint a new City Manager, in view of the leave of absence granted to the first City Manager, then his answer was that there was no power in the original Board of Commissioners to appoint a new City Manager, because Section 25 of the Act says that in case of absence or leave or any vacancy, another official of the Government steps into the office of the official of the Government who is thus absent, and this is the opinion of the Attorney General which is cited by the opponents. That opinion did not involve the question of the tenure of the

City Manager at all; neither did the other opinion rendered to the petitioner himself.

The other opinion of the Attorney General simply covered the following points, and I quote the opinion:

> "I am pleased to acknowledge receipt of your communication of the ninth instant requesting my opinion with respect to (1) the term of the officers and employees of the Capital which were appointed on September 11, 1931; and (2) if the new administration is or is not a continuation of the former."

In other words, neither of the opinions of the Attorney General involved the question of tenure of office of the City Manager.

So on January 4, 1937, the petitioner here was put into the office of City Manager.

In 1940, general elections were held in Puerto Rico again, and another man by the name of Fernando J. Geigel campaigned as a candidate for the office of City Manager, in accordance with the general understanding and construction of the statute as providing for the appointment of a new City Manager every four years.

The party to which Geigel belonged won the election and in 1941 he was appointed.

It should be noticed that Mr. Geigel had been appointed to fill the office upon the ouster of petitioner, prior to the 1940 election, and when Geigel won the election in 1940 he was reappointed to fill the office.

In other words, the Board understood then, as it has always understood, that it was necessary to appoint Mr. Geigel in 1941, as the City Manager, because his term had already lapsed after the elections were held.

Therefore, contemporaneous construction of the statute, practically contemporaneous construction of the statute, by the people and officials concerned, in fact, I might say, by the legislature itself, because this matter came up in 1936, and in 1940, and the legislature met in session after that, in many sessions, and no amendment to this Act was made,—had fixed the meaning of the statute.

Contemporaneous construction, therefore, had fixed the meaning for this statute, and when the question came before the Supreme Court of Puerto Rico it took into consideration all those factors:

It took judicial notice of all these facts and it found that the intention of the Legislature was that the term of office of the City Manager should be the same as that of the appointing power, the Board of Commissioners.

That judgment was appealed from to the Circuit Court of Appeals.

The Circuit Court of Appeals analyzed the opinion of the Supreme Court of Puerto Rico and expressly said that it was not prepared to say that the judgment of the Supreme Court was inescapably wrong. It further said that if it were free to take an independent view, it would be inclined—these are the very words—to disagree with the Supreme Court of Puerto Rico, but that it could not say that the judgment was patently erroneous or patently absurd—those are the phrases used by this court in its different decisions—and, therefore, it affirmed the judgment of the Supreme Court of Puerto Rico.

It will thus be seen, therefore, that the only question before this court is whether this interpretation made by the Supreme Court of Puerto Rico is patently absurd, inescapably wrong, for otherwise, in accordance with the definite rule of this court, the judgment of the Circuit Court should be affirmed.

Mr. Associate Justice Jackson: What distinction, from your point of view and from your law practice in Puerto Rico, do you draw between a judgment being plainly wrong and inescapably wrong?

Mr. Cuyar: I do not know of any better way to answer that question than by reading the following paragraph from the decision of this Court—

Mr. Associate Justice Jackson (interposing): I thought you could add something to what we have already known. There is "wrong", "very wrong," "inescapably wrong"—

Mr. Cuyar (interposing): It has been reiterated many ways since:

> "To reverse a judgment of a Puerto Rican tribunal on such a local matter as the interpretation of an act of the local legislature, it would not be sufficient if we or the Circuit Court of Appeals merely disagreed with that interpretation. Nor would it be enough that the Puerto Rican tribunal chose what might seem, on appeal, to be the less reasonable of two possible interpretations. And such judgment of reversal would not be sustained here even though we felt that of several possible interpretations that of the Circuit Court of Appeals was the most reasonable one. For to justify reversal in such cases, the error must be clear or manifest; the interpretation must be inescapably wrong; the decision must be patently erroneous."

That is what the Court said in the case of *Sancho Bonet, Treasurer,* v. *The Texas Company,* 308 U. S. 463.

As I see it, your Honor, this means that if there are, or if there is more than one construction of a statute, even though the construction adopted by the Supreme Court of Puerto Rico might seem the less reasonable one, even though this Court may disagree with that construction, even though this Court may disagree with the construction made by the Circuit Court, and even though the construction made by the Circuit Court may seem on appeal to be the most reasonable, yet the judgment should be affirmed.

Mr. Associate Justice Jackson: What I was wondering is whether you regard, in your opinion, from the point of view of the Island, whether you regard this rule as virtually cutting off your right to appeal and whether you consider that there is no use appealing unless you have a pretty good case.

I wonder if you construe it as a virtual denial of your right to appeal unless you have an obviously frivolous decision of your court.

Mr. Cuyar: No. The way I understand the rule you can only appeal with a good case.

Mr. Associate Justice Jackson: A solvent client is not enough.

Mr. Cuyar: No, sir, unfortunately.

I think that the rule expedites cases, avoids unnecessary delays, as, for instance, with respect to the practice of the Circuit Court of Appeals in these cases: The transcript of record is not printed until you file a statement on appeal which shows prima facie that your case is meritorious.

In other words, clients and litigants are saved certain expenses and certain delays by virtue of the rule.

I do not think that appeals should be stimulated unless there is clearly a good ground for appeal.

Mr. Associate Justice Black: Did you represent the Board in the first appeal?

Mr. Cuyar: To the Circuit Court?

Mr. Associate Justice Black: Yes.

Mr. Cuyar: Yes, sir.

Mr. Associate Justice Black: Did you attack the rule when you asked for certiorari, the rule 39 (b)?

Mr. Cuyar: I did not, sir.

I was going to mention that when I took this appeal from the first judgment, to the Supreme Court, or rather to the Circuit Court of Appeals, my opponents obtained summary disposition of my appeal on the basis on Rule 39 (b).

Mr. Associate Justice Black: Did they take the position then that 39 (b) was a bad or a good rule?

Mr. Cuyar: I imagine they took advantage of that; they really obtained the dismissal without hearing.

Mr. Associate Justice Black: Did they oppose the application for certiorari which you had?

Mr. Cuyar: They certainly did.

Mr. Associate Justice Black: So at that time you were hit by the rule?

Mr. Cuyar: That is right.

Mr. Associate Justice Black: And now you are the other way; the position is reversed.

Mr. Cuyar: That is right.

At that time petitioner here availed himself of the rule and obtained dismissal. There was summary disposition made of the principal case.

Mr. Associate Justice Black: Did they ask summary disposition before?

Mr. Cuyar: Yes.

Mr. Associate Justice Black: And got it?

Mr. Cuyar: Yes.

Mr. Associate Justice Black: That was a question as to how much they could interfere with the Board's right to remove the official?

Mr. Cuyar: Yes, the construction of Act No. 99, as to the right to remove, just cause for removal. The Circuit Court dismissed the appeal on the statement of appeal we filed, said it was not willing to make a construction different from that made by the Supreme Court of Puerto Rico in favor of the petitioner, so we applied to this Court for certiorari.

Mr. Associate Justice Black: Did you take the position there that it practically cut off your right of appeal?

Mr. Cuyar: In the petition for certiorari?

Mr. Associate Justice Black: Yes.

Mr. Cuyar: No, sir. We came to this Court on the merits of the case.

As I see it, the merits of the case are in the first judgment. This is only an incident of the case.

This man was ousted from office by the Board of Commissioners on the ground of immoral and improper conduct, and so forth, and the District Court of San Juan said it could not interfere with the decision of ouster, but the Supreme Court of Puerto Rico said that the City Manager could not be ousted except for grave negligence or a crime or a misdemeanor.

We took an appeal from that judgment of the Supreme Court and that appeal was dismissed on the basis of rule 39 (b) of the Circuit Court, and this Court denied certiorari against that dismissal, and when the case went back, the term having expired, the Board filed a petition for stay, and that is the one now before this Court.

Mr. Associate Justice Frankfurter: In any of the cases that the Circuit Court of Appeals has decided in recent years, is there any other opinion in which the Circuit Court of Appeals said that in their view the judgment of the reviewed Supreme Court opinion went beyond the permissible limits of interpretation but they were not free, in their view of what their duty was under our rule, to deal with the matter, even though they committed themselves to the legal proposition that what the Supreme Court of Puerto Rico did went beyond the permissible limits of interpretation.

Is there any other case where the District Court felt that they were so bound by their natural duty to follow what this Court said.

Mr. Cuyar: Yes. In the case of *De La Torre* v. *National City Bank*, that was the view taken.

Mr. Associate Justice Frankfurter: What did they say there?

Mr. Cuyar: They said: If we were free to take a wholly independent view of the question at issue, we would reverse the judgment.

Mr. Associate Justice Frankfurter: I indicated before the recess my trouble with the phrase "wholly independent".

Mr. Cuyar: They said it would be a touch of arrogance.

Mr. Associate Justice Frankfurter: You are not in the next case.

Mr. Cuyar: No, sir.

Mr. Associate Justice Frankfurter: That case really involves the propriety or the practical operation of the rule under which the Circuit Court of Appeals is now operating.

Mr. Cuyar: I know. But in this case that is not involved.

Mr. Associate Justice Frankfurter: It is not involved in this case because they actually heard it.

What is the practical operation of this rule?

Have you any light on that, since it was enforced by the Circuit Court of Appeals?

Mr. Cuyar: I can only say, as I said to Mr. Justice Jackson—

Mr. Associate Justice Frankfurter (interposing): I am not asking your judgment on what you concluded from this Court's opinion.

I would like to know your understanding of the rule under which the Circuit Court is operating in reference to appeals from Puerto Rico.

Mr. Cuyar: You file a statement to show that your appeal is meritorious. If they don't think it is meritorious they dismiss the appeal or affirm the judgment. If they do feel it is meritorius and therefore worthy of consideration and discussion, they let the case go on to regular hearing, and you file briefs, and so forth.

Mr. Associate Justice Frankfurter: That is the mechanics of it. That is just the mechanics of it.

What is the practical operation?

Mr, Cuyar: The practical operation of it is that it has restricted appeals quite a bit.

Mr. Associate Justice Frankfurter: The Court of Appeals also indicated that there are various considerations that come into play properly, naming them, and among them that they do not want to bring on counsel, and they don't want to put litigants to great expense, and so forth.

Do you understand that they concede the rule to be the same as was the rule in this Court in reviewing Territorial judgments?

This is an old problem, of course.

Mr. Cuyar: Yes.

Mr. Associate Justice Frankfurter: In the history of this Court and appellate courts.

Mr. Cuyar: Yes.

Mr. Associate Justice Frankfurter: In reviewing so-called local law, this is an old problem.

Mr. Cuyar: Yes.

Mr. Associate Justice Frankfurter: There may be special emphasis on it when you deal with a body of law like the Puerto Rican law, but the problem is an old problem, namely the deference to be paid the local adjudication of a local rule.

Now, do you understand the pronouncement of the Circuit Court of Appeals for the first Circuit, its rule and practice, as represented by the course of cases and what they state to be that their notion is merely that old doctrine, namely, that this Court when reviewing Territorial courts would defer generously to the local administration, or do they consider themselves to be a rubber stamp or a dead letter?

I should think this is a matter of importance to the Bar and to the people of Puerto Rico.

Mr. Cuyar: It is.

I would not know how to answer your question.

I know they should feel that the rule is just the same as it was seventy years ago; that is my impression.

Mr. Associate Justice Frankfurter: Is it a matter of importance—if you feel free to answer that, representing a public body—is it a matter of importance or a matter of indifference whether there is an opportunity that the Congress has provided an appeal to the Circuit Court of Appeals in cases coming from Puerto Rico—is that a matter of indifference?

Mr. Cuyar: It is not.

Mr. Associate Justice Frankfurter: Which is your answer?

Mr. Cuyar: It is not a matter of indifference.

I am speaking of the Bar of Puerto Rico.

I am vice president of the association.

We want to have the right of appeal.

Mr. Associate Justice Frankfurter: I feel free to ask you, because of this problem is to get the locally informed disinterested local view.

Mr. Cuyar: I feel free to answer your Honor and I want to answer your Honor:

We do not want final judgments in the Supreme Court of Puerto Rico. We do want the right to take an appeal if we feel that the judgment is erroneous.

Of course that is not incompatible with our desire that the judgments of the Supreme Court of Puerto Rico should

be respected by the Federal Courts, the same as the state Supreme Court judgments lay down the law in the states. So there is—

The Chief Justice (interposing): We cannot do that; we review the law of Puerto Rico but when it comes here we do not review the law of the states?

Mr. Cuyer: I do not understand.

Mr. Associate Justice Frankfurter: You mean that there is an analogy to the old Territorial courts of New Mexico, for example?

Mr. Cuyar: Of New Mexico, or Texas.

The Chief Justice: Then what do we do when we do that?

Mr. Cuyar: I beg your pardon?

The Chief Justice: I say what do we do when we do that? The Circuit Court of Appeals of the First Circuit and this court—how much weight do we give to Puerto Rico?

Mr. Cuyar: That is quite hard to answer. That is a matter of the degree of deference that should be paid to their judgment.

This court says it is not sufficient to disagree.

Mr. Associate Justice Frankfurter: Under the existing situation this happens to be a problem that I have long had an interest in, as you probably know?

Mr. Cuyar: Yes.

Mr. Associate Justice Frankfurter: There happens to be two angles to this thing in the present jurisdictional question.

Mr. Cuyar: Yes.

Mr. Associate Justice Frankfurter: Namely the Congress gives direct appeal when the monetary amount is appropriate. The old situation was that you had to have $25,000 involved to get here.

Mr. Cuyar: Yes.

Mr. Associate Justice Frankfurter: With reference to the Puerto Rican appeals, Congress still requires a substantial situation in terms of money, and requires $5,000.

So the Congress, for reasons that I do not profess to understand, the Congress retained apparent jurisdiction in the Circuit Court of Appeals, not discretionary but absolute, subject to rules similar to ours, that a frivolous appeal is not an appeal.

In addition to that, it gave a further opportunity of correction both of what the Supreme Court of Puerto Rico did and what the Circuit Court of Appeals did, by granting the right of certiorari here.

So you have a system of appeals that brings into play this problem of deference in a very sharp way.

You have one situation, taking the Philippine Islands cases, where the only opportunity for review is by petition to this court on certiorari.

Then come into play all considerations that determine whether a petition should be granted or not, even though the judgment below is as wrong as can be.

That is not the same as the situation that applies to Puerto Rico.

Therefore, a different problem is presented.

I am off the deference now.

Mr. Cuyar: Yes.

I just wanted to say in connection with that that with the old Territories, the litigants in the old Territories had a direct right of appeal to this court and then this Court initiated the deference rule even though it was a matter of right, because, as I see it, the rule is based on policy.

The Chief Justice: On what?

Mr. Cuyar: On policy.

Mr. Associate Justice Frankfurter: Very sound policy.

Mr. Cuyar: Yes.

Mr. Associate Justice Douglas: Justice Reed expressed it clearly. The last was the opinion in 315 United States—

Colonel Rigby (interposing): It is at Page 16 of our Brief.

Mr. Cuyar: That quotation is:

"We cannot say that an interpretation placed by the Supreme Court of Puerto Rico upon statutes whose meaning is so open to doubt is plainly incorrect. Accordingly, though the interpretation suggested by the Circuit Court of Appeals may be equally plausible, it erred in reversing the judgment of the Insular Court."

Mr. Associate Justice Douglas: Is that too strong?

Mr. Cuyar: I think it is more or less the same thing as the other expression.

Mr. Associate Justice Frankfurter: What is the philosophy—the one that Justice Holmes indicated?

Mr. Cuyar: That is right. It is to provide for orderly development—

Mr. Associate Justice Frankfurter (interposing): The philosophy is that at a distance you may misconceive the letters of the locality, things may be written and you may read them, but there are infusions that do not appear.

Mr. Cuyar: Which the local courts take into consideration.

Mr. Associate Justice Frankfurter: The whole question is what the Circuit Court of Appeals' understanding of that rule is. If they think as a matter of fact that you must prove your wrong the way you prove a multiplication or a sum is wrong, that is one thing.

That is about where they are now.

Mr. Cuyar: This particular case—

Mr. Associate Justice Frankfurter (interposing): Not this particular case.

Mr. Cuyar: I think practically that is the way they are.

Mr. Associate Justice Frankfurter: And you do not approve of that, do you?

Mr. Cuyer: No, sir.

Of course that issue is not in this case.

Mr. Associate Justice Frankfurter: I ventured to ask about the broader question because we have the next case in which you do not happen to be appearing.

Mr. Associate Justice Black: How many judges do you have in the Supreme Court?

Mr. Cuyar: Five.

Mr. Associate Justice Black: How are they selected?

Mr. Cuyar: They are appointed by the President with the advice and consent of the Senate.

Mr. Associate Justice Black: For lifetime?

Mr. Cuyar: Yes.

Mr. Associate Justice Black: And the judges of the Supreme Court of Puerto Rico are there for a lifetime?

Mr. Cuyar: Yes.

Mr. Associate Justice Black: What is the next court below that?

Mr. Cuyar: The District Court.

Mr. Associate Justice Black: Is there any court below that?

Mr. Cuyar: The Municipal Court.

Mr. Associate Justice Black: You appeal from the Municipal Court to the District Court?

Mr. Cuyar: That is right.

Mr. Associate Justice Black: And from the District Court to the Supreme Court?

Mr. Cuyar: That is right.

Mr. Associate Justice Black: And this case started where?

Mr. Cuyar: The District Court, well, the case started in the formulation of charges, brought by the Board of Commissioners against the Chief Executive. The charges were tried. The Board decreed removal of the Mayor and then the Mayor went to the District Court to apply for certiorari to review the action of the Board.

Mr. Associate Justice Black: What does the Court mean by the statement that this petitioner was a candidate for Manager in 1936?

Was that after the appointment had been obtained by him on which he is now relying?

Mr. Cuyar: No.

Mr. Associate Justice Black: When was he appointed?

Mr. Cuyar: In 1937, after the 1936 elections; after his Party won the 1936 elections.

Mr. Associate Justice Reed: Was it before the 1936 Commissioners took office?

Mr. Cuyar: After the 1936 Commissioners took office he was appointed.

Mr. Associate Justice Black: And then as to the 1940 election they refer to, they do not state he was a candidate.

Mr. Cuyar: No, he was not. There was another candidate. He was not a candidate because he was removed.

Mr. Associate Justice Black: Another candidate of the Party of which he was elected?

Mr. Cuyar: He was not a candidate in 1940 of that Party. He had left that Party and had joined another party.

Mr. Associate Justice Black: Does that appear in the opinion?

Mr. Cuyar: Yes, that appears in the opinion from the Supreme Court of Puerto Rico. Another man was a candidate of the same Party, and the same Party won the 1940 election, and the other man was appointed City Manager in accordance with the result of the election of 1940.

That is all I have to say.

Mr. Associate Justice Douglas: From the point of view of your Bar Association, is this an extreme rule or an undesirable rule?

Mr. Cuyar: Well, sir, from the point of view of the Puerto Rican Bar Association the rule is not extreme at all if applied with discretion.

In other words, the rule in itself is not bad, but a misapplication of the rule may have bad effects.

The Chief Justice: And, looking at the whole field, do you say it has been applied with discretion or not?

Mr. Cuyar: My honest opinion is it has not.

Mr. Associate Justice Douglas: Except in this case?

Mr. Cuyar: Well, I was talking generally.

Mr. Associate Justice Frankfurter: You were asked what the general effect was, were you not?

Mr. Cuyar: Sure. That is the general effect.

I do not know of any occasion in which the Circuit Court of Appeals has reversed the Supreme Court of Puerto Rico stating that there is an inescapable error. That may be an indication.

I shall submit the case.

Concluding Argument on Behalf of the Petitioner.

By Colonel William Cattron Rigby.

Colonel Rigby: If the Court please, I do not think that my distinguished opponent and I are very far apart on the matter of the rule. I may want to say a little more about the rule in the form that it has been formulated under Rule 39 (b) and the practical workings of it in arguing the next case immediately after this one.

So far as the history of the present case is concerned I would say just one word, perhaps:

Counsel says that in his opinion the Board of Commissioners in granting a leave of absence to the first City Manager, Mr. Castano, acted without authority, but it did it.

Now, in doing it it acted in accordance, strictly, with two opinions of the Attorney General of Puerto Rico, rightly or wrongly.

Mr. Castano for the matter of his health apparently resigned his office. By his letter of September 11, 1936, he said that he was going to resign and he asked for 150 working days leave of absence, which is practically six months, to March 18, 1937, and gave notice that at that time tendered his resignation effective at that latter time.

So, of course, whatever one may think as to the tenure of office, it was manifest that office would become vacant at that time, and it was perfectly proper for a candidate to announce himself as Mr. Castro did as a candidate of his Party for appointment to the office when it should become vacant, and he was a candidate whom everybody knew that Party would appoint whenever they got an opportunity to do so.

Now, they carefully did not, however, appoint him when they came into office.

The Board of Commissioners on January 4, 1937, in accordance with the two opinions of the Attorney General, one of December 8, 1936, and the other rendered on January 30, 1937, put through that machinery because everybody was willing that Mr. Castaño take a leave of absence as Treasurer and the next man under him also take a leave of absence. Mr. Castaño before taking a leave of absence appointed Mr. de Castro, Director of Health and Charity, and when the ones above took leave of absence he became automatically acting City Manager, but he was not appointed City Manager until the adoption of the resolution of March 19th when Mr. Castaño's leave of absence expired.

So everybody seemed to be, as far as the record was concerned, at one as to the idea that it was a permanent appointment as City Manager and, as I say, there is no suggestion that we can find anywhere in the record until October 27, 1941, when this petition for stay was made to the Insular Supreme Court, that it was otherwise.

Just one word about another point of that that we have not said much about.

Mr. Associate Justice Black: What about the appointees under Section 39?

Colonel Rigby: Oh, they are analogous to Civil Service employees.

Mr. Associate Justice Black: For life?

Colonel Rigby: For the time the appointing officer holds.

Mr. Associate Justice Black: Then they would be appointed for life, too?

Colonel Rigby: If they were appointed by the City Manager they would be appointed for life.

Mr. Associate Justice Black: Is that a contract?

Colonel Rigby: No.

Mr. Associate Justice Black: Has that question come up?

Colonel Rigby: Now we are getting off a little—I suppose not.

We had two cases when I represented the Government of Puerto Rico, under the Civil Service laws regarding reduction of salaries of employees during the period of the depression, and it was held by the Circuit Court of Appeals, and this Court denied certiorari, that it was not a contract and the Legislature did have the power to reduce the pension of retired Civil Service employees.

Mr. Associate Justice Black: But this gives authority to, it seems, appoint employees and stenographers and so forth for life?

Usually you do that by contract.

Colonel Rigby: Well, I don't know if you call the Civil Service employee—a stenographer, of course, could be.

It is analogous, somewhat, and apparently intended to be—I am guessing now—to the Civil Service establishment of Puerto Rico, to Civil Service employees of the Insular Government.

Mr. Associate Justice Black: Do you know of any cases that have come up by employees who claimed to be appointed for life and the contract could not be impaired?

I mean under the law.

Colonel Rigby: No, not under this law, but under the 1931 Civil Service law.

Mr. Associate Justice Black: I see your adversary nodding his head as if there may be.

Colonel Rigby: I do not know of any, as far as that is concerned, but on the other point, of course, we have made one of the grounds of the petition for certiorari and we have argued it in the brief.

The Insular Supreme Court, as the appellate tribunal, had no power to change its judgment and amend it by staying the execution of this part of it upon a motion to stay because of the supposed expiration of the term of office. That was a matter that should have been, if it was to be brought up, sent back to the District Court, the Court that has the power to take evidence, and should have been tried before a tribunal that could take evidence, and not be dealt

with simply as a matter of pure law if it were contended that there was an ambiguity in Section 21.

Mr. Associate Justice Black: What evidence should have been taken?

Colonel Rigby: We have put it before the Court here in regard to certificates. We think this Court has power to take judicial notice of it, just as much power to take judicial notice of it as the Insular Supreme Court had to take notice that de Castro was a candidate for the Legislature in 1940. That is, these facts shown in these different resolutions that were adopted by the Board giving the definite history of it. The Supreme Court of Puerto Rico did not have much of that before it and we think on a matter of that kind there were both matters of public notice which could properly be taken judicial notice of, and other matters in detail which the Court could not take judicial notice of—if there was any evidence of that kind to be heard it should have been heard to determine whether or not, assuming there was some ambiguity, the statute should be construed as meaning what on its face it does, or meaning something else, that that was a matter that was not within the jurisdiction of the Supreme Court of Puerto Rico as an appeal tribunal to decide in that way, and, on the other hand, if it was within the jurisdiction of that appellate tribunal, then it having been equally in the jurisdiction of this court on certiorari and the Supreme Court of Appeals on appeal there, and not raised there, it is *res adjudicata*.

So, one way or another, they had no jurisdiction to consider it.

But that, of course, is really a minor matter because the question is whether or not the term had expired and whether or not—just one other word—it may not really be significant but we think it is, that this Section 21 as first presented to the Legislature contemplated a four-year term and the measure, as it came out, has a term "for good conduct" as City Manager. Now, the fact that there was some inconsistency in the form of it and that that might have left

the city for a year or five months without a chief executive, as first presented to the Legislature, is hardly to be considered sufficient reason for changing the whole plan from the Mayor to the City Manager and for changing the whole plan of the four-year term to a "good conduct" period, unless there was a real definite purpose in creating the City Manager form of Government for this one city, the Capital of Puerto Rico.

(Thereupon at 3:27 o'clock p. m. the oral argument in the instant case was concluded.)

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SUPREME COURT OF THE UNITED STATES.

No. 349.—October Term, 1943

Carlos M. DeCastro, Petitioner, vs. Board of Commissioners of San Juan. | On Certiorari to the United States Circuit Court of Appeals for the First Circuit.

[May 29, 1944.]

Mr. Chief Justice Stone delivered the opinion of the Court.

In this case the petition urged as a ground for certiorari, which moved us to grant it, that the decision of the Court of Appeals below, as in a companion case, No. 497, *Mario Mercado e Hijos* v. *Commins*, decided this day, "practically closes the doors of the appellate court below" to appeals which the statutes of the United States allow to Puerto Rican litigants in the insular courts and "discriminates in favor of the fortunate persons" who, through diversity of citizenship, can take their cases to the United States District Court for Puerto Rico,[1] instead of to the insular courts.

Petitioner brought the present proceeding by petition for certiorari in the District Court of San Juan, Puerto Rico, to review the action of respondents, the Board of Commissioners governing the City of San Juan, in removing petitioner from the office of city manager to which the Board had appointed him. The District Court of San Juan sustained the Board. On appeal the Supreme Court of Puerto Rico reversed the insular District Court and directed petitioner's reinstatement. 57 P. R. 149. On appeal to the Court of Appeals for the First Circuit under 28 U. S. C. § 225, that court affirmed, 116 F. 2d 806, and this Court denied certiorari, 314 U. S. 614.

On the remand the Supreme Court of Puerto Rico, on motion of respondents, entered judgment staying execution of its first judgment insofar as it ordered petitioner's reinstatement, on the ground that petitioner's term of office had expired in February, 1941, after the decision of the Court of Appeals on the first ap-

[1] See 48 U. S. C. § 863.

peal. 59 D. P. R. 676 (Spanish Edition). Construing the applicable statutes of Puerto Rico in the light of the practical construction given to them by public officials and political parties of the island, and other matters of which it took judicial notice, the insular court came to the conclusion that "the tenure of office of the City Manager . . . is that of four years, provided that during the same he observe good behavior". On appeal from this judgment the Circuit Court of Appeals affirmed, 136 F. 2d 419. We granted certiorari, —U. S. — for the reason already stated and because some observations in the opinion of the Circuit Court of Appeals have raised serious questions with respect to the appropriate rule governing decision of cases involving local laws, brought from the insular courts of Puerto Rico for review by the Court of Appeals for the First Circuit and by this Court.

The Court of Appeals, in affirming the judgment of the Supreme Court of Puerto Rico, pointed out that § 21 of Act No. 99 of 1931, which established the government of the city of San Juan, the capital of Puerto Rico, provided that the city manager "shall be appointed by the Board of Commissioners created by this Act and shall hold office during good conduct". It said, "If we were free to take a wholly independent view of the point at issue we would be inclined to conclude that the meaning of § 21 is clear, and that the court below went beyond the permissible limits of interpretation in reading the clause 'and shall hold office during good conduct' as meaning that 'the tenure of office of the city manager of the capital is that of four years, provided that during the same he observe good behavior.'" But it felt constrained to affirm the judgment of the Puerto Rican tribunal by our decision and opinion in *Bonet* v. *Texas Company*, 308 U. S. 463, 471.

In that case, in reversing a decree of the Circuit Court of Appeals which had reversed the Supreme Court of Puerto Rico on a point of local law, we said, "to justify reversal in such cases, the error must be clear or manifest; the interpretation must be inescapably wrong; the decision must be patently erroneous." And since the Court of Appeals in this case was not prepared to say that the judgment now under review is "inescapably wrong", and as it thought that this Court's statement in the *Bonet* case had reduced the duty of the Court of Appeals to the performance of a mere mechanical function, it felt compelled to affirm the judgment. It also suggested that, as the rule of decision

applicable to appeals from the insular Supreme Court, as announced by the *Bonet* case, had not been applied in appeals from the United States District Court for Puerto Rico, different interpretations of local law might be established in the Court of Appeals, depending on whether the case was appealed from the insular court or from the United States District Court for Puerto Rico.

Our opinion in the *Bonet* case was the culmination of efforts by this Court, beginning with *Garcia* v. *Vela*, 216 U. S. 599, 602 (1910); *Lewers & Cooke* v. *Atcherly*, 222 U. S. 285, 294 (1911); and *Ker* v. *Coudens*, 223 U. S. 268, 279 (1912), to insure a review by the federal courts of decisions of the local courts of our insular possessions in matters of peculiarly local concern which should leave appropriate scope for the development by those courts of a system of law which differing from our own in its origins and principles, would nevertheless be suitable to local customs and needs. In thus interpreting the function of the federal appellate courts in reviewing decisions of the insular tribunals we only followed a principle which had long been established for appeals to federal courts from the courts of our territories within the United States.[2]

From the beginning we have recognized that the appellate review of insular cases was not given to the federal courts for the purpose of superimposing upon the Spanish law our common law preconceptions, except so far as that law must yield to the expressed will of the United States. *Diaz* v. *Gonzales*, 261 U. S. 102, 105-6. Hence we have emphasized as a cardinal principle of review in such cases that the mere fact that our own system of law and statutory construction would call for the application of one rule to a given set of facts, does not preclude the adoption of a different one by the insular courts. See *Waialua Co.* v. *Christian*, 305 U. S. 91, 109. If the rule thus announced by the insular court is one which is not plainly inconsistent with established principles of the local law, or in their absence is one accepted by the practice of the community, it will not be rejected here merely because it is

[2] Sweeney v. Lomme, 22 Wall. 208, 213; Northern Pacific R. Co. v. Hambly, 154 U. S. 349, 361; Fox v. Haarstick, 156 U. S. 674, 679; Armijo v. Armijo, 181 U. S. 558, 561; Copper Queen Min. Co. v. Terr. Bd. Equalization of Arizona, 206 U. S. 474, 479; Lewis v. Herrera, 208 U. S. 309, 314; English v. Arizona, 214 U. S. 359, 361, 363; Santa Fe County v. Coler, 215 U. S. 296, 305, 307; Albright v. Sandoval, 216 U. S. 331, 339; Treat v. Grand Canyon R. Co., 222 U. S. 448, 452; Clason v. Matko, 223 U. S. 646, 652; Gray v. Taylor, 227 U. S. 51, 56-57; Phoenix R. Co. v. Landis, 231 U. S. 578, 579-580; Santa Fe Central Ry. Co. v. Friday, 232 U. S. 694, 700.

not in logical harmony with the rules which we would apply to a community within the United States. It will be rejected only on a clear showing that the rule applied by the local court does violence to recognized principles of local law or established practices of the local community.

The guiding principle, which is incapable of statement in a short formula, has been variously phrased in terms which in every case must be interpreted in the light of the particular situation to which they were applied.[3] But the principle which these phrases were intended to express has not been more accurately and comprehensively stated than by Mr. Justice Holmes in words which are completely applicable to the present case, in *Diaz* v. *Gonzales*, *supra*, 105-6:

"This Court has stated many times the deference due to the understanding of the local courts upon matters of purely local concern. It is enough to cite *De Villanueva* v. *Villanueva*, 239 U. S. 293, 299; *Nadal* v. *May*, 233 U. S. 447, 454. This is especially true in dealing with the decisions of a Court inheriting and brought up in a different system from that which prevails here. When we contemplate such a system from the outside it seems like a wall of stone, every part even with all the others, except so far as our own local education may lead us to see subordinations to which we are accustomed. But to one brought up within it, varying emphasis, tacit assumptions, unwritten practices, a thousand influences gained only from life, may give to the different parts wholly new values that logic and grammar never

[3] Given the conditions which, as we have pointed out, call for the acceptance here of the decision of the local court, this Court has said that its decree must be accepted here unless "we thought it clearly wrong," Santa Fe Central Ry. Co. v. Friday, 232 U. S. 694, 700, unless "constrained to the contrary by a sense of clear error committed", Villanueva v. Villanueva, 239 U. S. 299, Matos v. Hermanos, 300 U. S. 429, unless "manifest error be disclosed", Fox v. Haarstick, 156 U. S. 674, 679; English v. Arizona, 214 U. S. 359, 363; Santa Fe County v. Coler, 215 U. S. 296, 305; Treat v. Grand Canyon Ry. Co., 222 U. S. 448, 452; Waialua Co. v. Christian, 305 U. S. 91, 109, "except upon an inescapable conclusion that it was wrong", Diaz v. Gonzales, 261 U. S. 102, 105, unless "plainly incorrect", Puerto Rico v. Rubert Hermanos, 315 U. S. 637, 646. In other cases, in affirming the decision of the local court, we have said that we will accord to its decision "great if not controlling weight", Lewis v. Herrera, 208 U. S. 309, 314; or "great weight", Lewers & Cook v. Atcherly, 222 U. S. 285, 294; cf. Cordova v. Folgueras, 227 U. S. 375, 378-9; or that we would "lean toward the interpretation adopted by the local court", Copper Queen Mining Co. v. Arizona Bd., 206 U. S. 474, 479; English v. Arizona, *supra*, 361; Clason v. Matke, 226 U. S. 646, 653, Gray v. Taylor, 227 U. S. 51, 57; or that we were "not disposed to disturb" its construction, Albright v. Sandoval, 216 U. S. 331, 339; Armijo v. Armijo, 181 U. S. 558, 561; cf. Phoenix Ry. Co. v. Landis, 231 U. S. 578, 579-80; and have spoken of the "caution to be used before overruling" local decisions, Fernandos & Bros. v. Ojeda, 266 U. S. 144, 146.

could have got from the books. In this case a slight difference in the caution felt in dealing with the interest of minors (*Baerga* v. *Registrar of Humacao*, 29 P. R. 440, 442,) and a slight change of emphasis in the reading of statutes, explain the divergence between the Supreme Court and the Circuit Court of Appeals."

Beyond the fact that common law judges in such cases are reviewing civil law decisions, it is of significance that considerations relevant for decision must be drawn from an environment unfamiliar to and far removed from that in which the reviewing court sits. That which is familiar and accepted in the island forum, in construing a statute or formulating a rule of law, may appear strange or unorthodox in a common law setting. In bridging gaps between legal systems having different origins and history, and governing two different polities, the rule we have announced has special importance.

Repeated admonitions that in cases coming from the Puerto Rican insular courts to the federal courts for review, where the Constitution or statutes of the United States were not involved, great deference must be paid to local decisions, having failed of their purpose, see *Bonet* v. *Yabucoa Sugar Co.*, 306 U. S. 505,[4] we restated them in more emphatic form in *Bonet* v. *Texas Company, supra*, 470, in the sentence quoted in the opinion below which we have repeated here. In order that its true purport might not be misunderstood we accompanied the sentence by the statement of Mr. Justice Holmes in *Diaz* v. *Gonzales, supra*, 105-6, which we have quoted, and in the light of that exposition we added: "Such a judgment of reversal [by the Circuit Court of Appeals] would not be sustained here even though we felt that of several interpretations that of the Circuit Court of Appeals was the most reasonable one".

Thus interpreted and read in its context the principle, as restated in the *Bonet* case, that to justify reversal by the federal courts of a decision of an insular supreme court in a matter of local concern, "the error must be clear or manifest; the interpretation must be inescapably wrong", is not a mere mechanical device which requires or admits, save in exceptional cases, of the summary disposition of appeals from that court. Nor does it

[4] See also Diaz v. Gonzales, 261 U. S. 102; Fernandez & Bros. v. Ojeda, 266 U. S. 144; Matos v. Alonzo Hermanos, 300 U. S. 429; Puerto Rico v. Rubert Hermanos, 315 U. S. 637; and similarly as to review of decisions of the Hawaiian Supreme Court, Waialua Co. v. Christian, 305 U. S. 91.

minimize the importance or dignity of the appellate function in such cases. On the contrary, we think that it imposes on the Court of Appeals and on this Court the peculiarly delicate task of examining and appraising the local law in its setting, with the sympathetic disposition to safeguard in matters of local concern the adaptability of the law to local practices and needs. It is one which ordinarily cannot be performed summarily or without full argument and examination of the legal questions involved. But if in the light of such an examination it is found that the rule adopted by the local tribunal is an intelligible one, not shown to be out of harmony with local law or practice, it is not to be rejected because we think a better could have been devised or because we find it out of harmony with our own traditional system of law and statutory construction.

Nor does it follow that the deference due, on appeals from the local tribunals, to their understanding of matters of local concern will lead to the establishment of a local law differing from that developed in decisions in appeals from the federal district courts sitting in our insular possessions. It is not any the less the duty of the federal courts in cases pending in the federal district court or on appeal from it to defer to that understanding, when it has found expression in the judicial pronouncements of the insular courts, *Nadal* v. *May*, 233 U. S. 447, 454; *Diaz v. Gonzales*, *supra*, 105; *Waialua Co.* v. *Christian*, *supra*, 109. Once understood what deference is to be paid, the problem is comparable to that presented when, upon appeals from federal district courts sitting in the states, the federal appellate courts are required to follow state law under the rule of *Erie* v. *Tompkins*, 304 U. S. 64. See *Wichita Company* v. *City Bank*, 306 U. S. 103; *Huddleston* v. *Dwyer*, No. 628, decided May 15, 1944.

There remains for consideration the appropriate application of these principles to the facts of the present case. The Act of the Puerto Rican legislature of May 15, 1931, Act No. 99 of 1931, established a special form of city government for the capital city, San Juan.[5] Legislative powers are vested in a Board of five

[5] The form of government for other municipalities in Puerto Rico is prescribed by Act No. 53 of 1928, which provides for a Mayor to be elected "in the same manner required by this Act for members of the municipal assembly" (§ 29), and hence presumably to serve a term of four years (*id.* § 17).

Commissioners; the first Commissioners were to be appointed by the Governor with the advice and consent of the Senate, for terms of one, two, three, four and five years, respectively (§ 9), but the Commissioners so appointed were to hold office only until the first Monday in January, 1937, (§ 50), and thereafter the "Board of Commissioners created by this Act" was to be elected at the general election held in 1936 and every fourth year thereafter (§ 50).[6] The Act provides that the City Manager, who is the chief executive of the city, "shall be appointed by the Board of Commissioners created by this Act and shall hold office during good conduct" (§ 21). He "may be removed by the Board of Commissioners, for just cause" after hearing, and causes for removal are enumerated (§ 22). Five other administrative officers are appointed by the City Manager (§ 26), and an Auditor is appointed by the Board of Commissioners (§ 36); the provisions as to their tenure of office and removal by the agency appointing them (§§ 27, 36) are identical with those for the City Manager,[7] save that only as to the City Manager does the Act specify a tenure of office "during good conduct." Other employees, appointed by the officers under whom they serve, "shall be appointed for the term for which each officer is appointed", and are also removable for cause after hearing, the causes not being specified, however (§ 39). No provision is made for bringing such employees within the Puerto Rican Civil Service Act, Act No. 88 of 1931, adopted four days before the adoption of Act No. 99.

The Puerto Rican Supreme Court refused to hold that the provision that the City Manager "shall hold office during good conduct" so conclusively established that he was to hold office for life as to preclude resort to extrinsic evidence of legislative intention. It held that his term was the same as that of the Board of Commissioners which appointed him, so that petitioner, who was appointed in 1937, by a Board of Commissioners elected for four years, held office for "four years provided that during

[6] By Act No. 10 of 1937 the Board was increased to nine, beginning in 1941, four Commissioners to be appointed every four years by the Governor with the advice and consent of the Puerto Rican Senate, and five to be elected as previously provided.

[7] In the English text the City Manager is removable for "inexcusable *negligence* in the performance of his duties", the officers appointed by him for "inexcusable *ignorance* in the performance of their duties" (italics added). In the Spanish text the word is "negligencia" in both cases.

the same he observe good behavior."[8] We cannot say that these holdings were so clearly wrong as to require a federal appellate court to refuse to pay deference to the insular court's decision.

While a provision that an office be held "during good behavior" is generally deemed indicative of an intention to create a life tenure unless cause for removal arises, see *Matter of Hennen*, 13 Pet. 230, 259; *Smith* v. *Bryan*, 100 Va. 199, 203; 40 S. E. 652, 653; *Chesley* v. *Council of Lunenberg*, 28 Dominion Law Rep. 571, 572, it has not been regarded, even where traditional notions of Anglo-American law prevail, as a rigid formula precluding any other construction.[9] And a tenure for a period of years during good behavior has not been regarded as a contradiction in terms by American courts.[10] In *Shurtleff* v. *United States*, 189 U. S. 311, 316, this Court recognized and applied the strong presumption against the creation of a life tenure in a public office under the federal government. To hold that the City Manager was appointed for life would, according to the terms of § 39, give to all employees appointed by him a tenure for his life. An intention to create such an *estate pur autre vie* in a public office would at least be somewhat unusual. On the other hand, if they are to be

[8] We need not consider what, under this construction, was the term of office of the City Manager first appointed in May, 1931. An admissible construction would be that the Board of Commissioners appointed by the Governor to serve until January, 1937 was regarded as a single body with a five year term, despite the annual changes in its membership, and hence the City Manager, whose term of office was that of the body appointing him, also had a tenure of some six and one-half years. At least this conforms to what in fact occurred.

[9] State courts have held that a provision for tenure "during good behavior" does not preclude the termination of the tenure by good faith abolition of the office, Shira v. State, 187 Ind. 441, 119 N. E. 833; that such a provision is not necessarily inconsistent with a constitutional restriction on the number of years for which the office can be held but will be read as creating a tenure for a term of years during good behavior, Callaghan v. Tobin, 40 Tex. Civ. App. 441, 448, 90 S. W. 328, 331; Callaghan v. Irvin, 40 Tex Civ. App. 453, 459, 90 S. W. 335, 338; Callaghan v. McGown, 90 S. W. 319, 322 (Tex. Civ. App.); Newmeyer v. Krakel, 110 Ky. 624, 640, 62 S. W. 518, 523; but cf. Stuart v. Ellsworth, 105 Me. 523, 75 Atl. 59; Roth v. State, 158 Ind. 242, 266-8, 63 N. E. 460, 468-9; and that a provision that officers appointed by the Mayor and Council shall hold office "during good behavior or until they may be severally removed by the Mayor or by three-fourths vote of the Council . . . " authorizes removal at will by the Mayor or Council, Smith v. Bryan, 100 Va. 199, 40 S. E. 652; cf. People *ex rel.* Maloney v. Douglas, 195 N. Y. 145, 150, 87 N. E. 1070, 1072. *Contra*, Chesley v. Council of Lunenberg, 28 Dominion Law Rep. 571. And in construing such provisions the courts have attributed weight to the practical construction placed on them by the public officials concerned, Klink v. State, 207 Ind. 628, 633, 194 N. E. 352, 354; Smith v. Bryan, *supra*, and to supposed anomalies resulting from a contrary construction, Smith v. Bryan, *supra*.

[10] Bruce v. Fox, 1 Dana (Ky.) 447, 452 *et seq.*; see cases cited *supra* note 9.

deemed appointed for their own lives, the result would be that on the death or resignation of one City Manager, his successor would be unable to select even his most immediate subordinates and a life tenure would be implied for a large group of municipal employees in disregard of the rule of *Shurtleff* v. *United States.*

Moreover there is no provision that the other municipal officers are to serve during good conduct, and § 39 seems to assume that they shall have defined terms of office. To hold that they could be appointed for life would be inconsistent with the rule of *Shurtleff* v. *United States, supra,* which the insular court accepted and approved. Since the Act is silent as to their terms of office, they can presumably be appointed for any term not exceeding that of the officer appointing them. The interpretation contended for by petitioner would seemingly produce the result that all of the other city officers, save the Auditor, and the employees in their respective offices, could be appointed for the life of the City Manager, unless he should, as the Puerto Rican court assumed he could, decide to appoint them for a shorter term (see §§ 26, 39). In the latter case appointees of other officials, themselves appointed for short terms, would necessarily have a like tenure of office (§ 39), while those of the City Manager would have a tenure for his life, and those of the Auditor a tenure of four years. Such incongruities the Puerto Rican court thought weighed heavily against the contention that petitioner's tenure was for life. This is the more so because the appointees of the City Manager and of officers appointed by him include most of the municipal officers and employees, none of whom are subject to the insular civil service laws, but who could be appointed for petitioner's life should petitioner's construction of the Act prevail.

In addition to considering the consequences of such a holding the Puerto Rican Supreme Court looked to the practical construction placed on the Act by the political parties of Puerto Rico, as shown by facts of which it could properly take judicial notice. It said that "the political parties of the Island have always construed this statute in the sense that the term of office of the City Manager of the capital is that of four years." It pointed out that at the general election held in 1936 and at that held in 1940 each of the political parties participating proposed a candidate for the office of City Manager, although that office did not appear on the ballot. It said that it was well known that petitioner was

the candidate of the winning party at the 1936 election and was appointed City Manager by the newly elected Board of Commissioners to replace the then incumbent, and that another was the candidate of petitioner's party at the 1940 election, and was appointed City Manager by the newly elected Board of Commissioners. This practical construction by the electorate and political parties, of which petitioner was himself the beneficiary,[11] strongly supports the interpretation of the Act as conferring on the City Manager a tenure no longer than that of the Board of Commissioners which appointed him.

In view of these considerations and of the principles long observed by this Court in reviewing decisions of the insular courts, which we have stated, we cannot say that we should not defer to the view of the Supreme Court of Puerto Rico that the meaning of § 21, when examined with the related provisions of Act No. 99, in the light of the prevailing practical construction of it, is not so plain and unambiguous as to preclude resort to extrinsic aids to interpretation. Nor can we say, that the practical construction given the Act, together with the strong presumption against life tenures, and the principle, accepted by the Supreme Court of Puerto Rico on the authority of numerous American decisions, that ambiguities should be resolved in favor of the shorter term of office,[12] were clearly insufficient to support the construction which it adopted.

Petitioner calls to our attention an opinion of the Attorney General of Puerto Rico, dated January 30, 1937, stating that "The administrative officers of the Capital . . . were appointed during good behavior" and that the appointments "participate of the nature of a life tenure." He also refers to correspondence of the first City Manager which could be taken as supporting respondent's position as much as it does petitioner's. It does not appear that these were called to the attention of the Supreme Court of Puerto Rico, but in any event they do not, in our opinion,

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11 The courts below did not consider, and the facts before us do not enable us to decide, whether should petitioner have prevailed in his construction of the Act as providing a life tenure, he could also establish his right to the office over that of the first incumbent, whom he superseded.

12 The Puerto Rican Supreme Court cited Aggeler v. Dominguez, 217 Cal. 429, 19 P. 2d 241; Lowrie v. Brennan, 283 Mich 63, 276 N. W. 900; Chamski v. Board of Auditors, 288 Mich. 238, 284 N. W. 711; Dobkins v. Reece, 17 S. W. 2d 81 (Tex. Civ. App.); Smith v. Bryan, *supra*, n. 9; 135 A. L. R. 1173, 1175.

counterbalance the weight rightly to be given to the decision of the insular Supreme Court as the ultimate insular interpreter of the local law. We have considered but do not find it necessary to discuss other contentions of lesser moment, most of which were dealt with in the opinion of the Court of Appeals below, and none of which call for a conclusion different from that which it reached.

Affirmed.